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EXAMINER

KEENAN, JAMES W

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,871	Applicant(s) WEIDEMANN ET AL.	
	Examiner James Keenan	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 and 45-124 is/are pending in the application.
- 4a) Of the above claim(s) 26-43 and 50-122 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 45-49, 123 and 124 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/07/10 has been entered.

2. Claims 26-43 and 50-122 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/02/08.

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 1/16/03 (103 01 591). It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

Applicant's indication that an attempt has been made to obtain said document is acknowledged.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-25, 45-49, 123, and 124 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 6 and 15, the recitation of “the track bed” lacks antecedent basis.

Claim 10, “directions of travel” lacks antecedent basis.

Claim 13, lines 9 and 20, “the track bed” lacks antecedent basis.

Claim 15, lines 2 and 4, and claim 16, line 3, there is no antecedent basis for a single “loading and unloading position”.

Also in claim 16, line 4, “the adjacent car frame” lacks antecedent basis.

Claim 17, line 11, “of the” should be --of each of the--;

line 12, “at” should be deleted;

and line 13, --of each of-- should be inserted after “end”, “are” should be --is--, and “the track bed” lacks antecedent basis.

In line 1 of each of claims 18-25, 123, and 124, “and/or” should be --and--.

Also in line 2 of claims 20, 24, and 48, and claim 49, line 3, “and/or” should be --and--.

Claim 20 refers to “the tracks” and “the track rails”, but claim 17 from which it depends recites “rail tracks”.

Claim 22, last line, “loading and/or unloading” should be --loading/unloading--.

Claims 23 and 24 recite plural “load supports”, but claim 22 from which they depend recites only a single “load support”.

Claim 25, “the track bed” lacks antecedent basis.

Claim 48, it is not clear what is meant by nor does there appear to be antecedent basis for “all ... devices”.

Claim 123 recites that “the lifting devices are lifting devices”. It is not clear what this is supposed to mean but it does further limit claim 21 from which it depends.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-25, 45-49, 123, and 124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer (US 4,522,546) in view of Glassmeyer (US 4,049,135), both previously cited.

Referring first to claim 13, Ringer teaches a method of transferring cargo between a train and a road vehicle or between first and second trains, by utilizing lifting devices 54 which are at least temporarily “anchored to the track bed”, as broadly recited (note gripping jaws 45, col. 7, lines 30-36), comprising moving a first train with at least a first cargo-carrying car into an unloading position (col. 5, lines 9-28), using the lifting devices to lift the cargo off the car (col. 8, lines 10-21), moving the cargo transversely of the longitudinal plane of the car until it is no longer above the car (col. 5, lines 7-30), moving a second train with at least a second car into a loading position (col. 5, lines 1-3), and loading the cargo onto the second car of the second train by reversing the

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unloading steps (i.e., moving the cargo transversely over the second car and lowering it thereonto by means of the lifting devices).

Ringer does not teach that the car superstructure of the first car is separate from the car frame and is moved with the cargo to a corresponding car frame of the second car.

Glassmeyer shows a method of moving cargo containers from one vehicle to another, wherein one of the vehicles has a separate frame 12 and superstructure 16, and where in at least certain circumstances (e.g., fig. 2) the cargo and superstructure are moved as a unit to the other vehicle.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Ringer by utilizing a separate car superstructure movable with the cargo, as Glassmeyer specifically teaches that cargo can be transferred between vehicles with or without a separate vehicle superstructure.

Re claims 14-16, the cargo can clearly be transferred from the first car to the second car either while the trains are situated on adjacent tracks G' and G'', or after the first train has left, and the second train has moved into the position vacated by the first train.

Re claims 1-12, the method could obviously be applied to a single car (i.e., unloading a car and the loading the same car with a different load) or separate cars (unloading a first car and then loading a second car with the load from the first car).

Re claim 17, as noted above, the lifting devices of Ringer are at least temporarily "anchored to the track bed", as broadly recited.

Re claims 18 and 19, Ringer shows positioning and leveling devices (figs. 5-7) as broadly recited.

Re claim 20, Ringer shows multiple lifting devices along the tracks.

Re claim 21, the lifting devices are hydraulic.

Re claim 22, the lifting devices interact with the underside of the cargo.

Re claims 23, 45-47, and 124, note motor-driven roller elements 58.

8. Claims 1-25, 45-49, 123, and 124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer in view of Glassmeyer, as applied above, and further in view of Gebhardt (US 4,715,766) or Tanabe (JP 59-194938), both previously cited.

While Ringer as modified is believed to show or suggest all of the features set forth in the claims, as noted above, this rejection is presented to strengthen the examiner's position in the event it is shown that the combination of references do not teach all claim limitations, or if the claims are amended to more clearly and distinctly set forth elements of the claims in a manner which overcomes the rejection.

As noted above, Ringer teaches a temporary connection (i.e., releasable gripping means) of the lifting devices to the track bed. The examiner is of the opinion that this meets the broadly recited requirement of being "anchored to the track bed".

However, even if this is shown to be incorrect, or the claims are further limited to invalidate this interpretation, Gebhardt and Tanabe are cited as showing similar loading/unloading devices which are clearly anchored to the track bed and supported adjacent to the tracks, and in view thereof, it would have been obvious for one of

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ordinary skill in the art at the time of the invention to have further modified the apparatus of Ringer with such a feature, to provide a more permanent and secure mounting of the lifting devices.

9. Applicant's arguments filed 1/07/10 have been fully considered but they are not persuasive.

Applicant argues that the references do not teach lifting devices anchored to the track bed. As noted above, Ringer is believed to show this feature as broadly claimed, but even if it doesn't, Tanabe and Gebhardt are believed to overcome any deficiency of Ringer. Applicant asserts that the references do not show the lifting devices "fixed **directly and permanently** to this track bed" (emphasis added), but no such limitations exist in the claims. Furthermore, the term "track bed" has no antecedent basis in the claims, and absent any particular limitation(s) given to the term, this generic recitation is not believed to define over any of the references.

Applicant also argues that Glassmeyer does not suggest the obviousness of a separate car frame and superstructure because the adaptor frame thereof is not suitable for use on a railcar. However, references do not need to literally "bolt" together to suggest obviousness. It is believed that one of ordinary would recognize that design alterations would need to be made to adapt Glassmeyer's frame to a railcar, but such alterations would be design expediencies well within the skill level of an ordinary artisan.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Keenan/
Primary Examiner
Art Unit 3652

jwk
3/20/10